



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 30 2004

Betsy L. Child, Commissioner
Tennessee Department of Environment and Conservation
401 Church Street
21st Floor, L&C Tower
Nashville, TN 37243-0435

Dear Ms. Child:

The Environmental Protection Agency (EPA) has received and considered Tennessee's revisions to the General Water Quality Criteria and Use Classifications for Surface Waters rules adopted by the Tennessee Water Quality Control on September 23, 2003, and submitted to EPA by letter dated October 24, 2003. These new and revised water quality standards were adopted by the State as a result of the triennial review of the standards conducted by the State in 2003. The submittal to EPA was accompanied by a certification from the State Attorney General that the revisions were duly adopted pursuant to State law.

The revisions to Tennessee's General Water Quality Criteria and Use Classifications for Surface Waters regulations include: editorial changes to clarify existing provisions and current practices; new and revised definitions; revised numeric water quality criteria consistent with EPA's Clean Water Act (CWA) section 304(a) criteria guidance; ecoregion-based water quality criteria for dissolved oxygen, pH, and nutrients; biological integrity and habitat criteria; revised provisions for instream design flow values used in the application of specific water quality criteria; language regarding the interpretation of pathogen data; an implementation methodology for the State's antidegradation policy; revision of the State's bacteriological density criteria to reflect *E. coli* criteria values as the sole bacteriological indicator for protection of primary and secondary contact recreation uses; and revised use classifications for several water body segments. These revisions were compared to the requirements of CWA section 303 and 40 CFR Part 131.

The following revisions are still under review and will be addressed under separate cover: (1) the dissolved oxygen criteria for subcoregion 71i; (2) the pH criteria for the Fish and Aquatic Life use for subcoregions 65j (stream orders 1-2), 68a (stream orders 1-3), and 74b (all stream orders); and (3) the pH criteria for the Recreation use. In addition, Tennessee has requested that we not take action on the revision of the interpretation of criteria with respect to minimum flows, as it is a provision the State would like to revise or withdraw from their water quality standards during the next triennial review. With the exception of these four provisions for which EPA is not taking action at this time, EPA has determined that the revisions to Tennessee's General Water Quality Criteria and Use Classifications for Surface Waters adopted by the State on September 23, 2003, comply with the requirements of CWA section 303 and 40 CFR Part 131. Therefore, with the exception of the four provisions that are specifically referenced above, the triennial review revisions to Tennessee water quality standards are approved.


EPA is not taking an action under CWA section 303(c) authorities on the portion of Rule 1200-4-3-.05(4) that was revised to specify the application of water quality criteria at an instream design flow of 30Q5. In a letter dated September 10, 2004, from Paul E. Davis, Director of the Tennessee Department of Environment and Conservation (TDEC) to my office, TDEC requested that EPA withhold action on this provision of Tennessee water quality standards. In that letter TDEC stated, "Our intent was that the narrative criteria set out in 1200-4-3-.03(3)(i) would apply, and the 30Q5 flow basis was inadvertently included. We will change or remove this provision when our standards are next considered. In the meantime, we will implement our narrative nutrient criterion in a manner consistent with the provisions of Rule 1200-4-3-.05(4), which are currently applicable for Clean Water Act purposes...If it is possible for EPA to formally take 'no action' on this provision, we would prefer that approach."

We understand that TDEC is reevaluating the scientific basis of the 30Q5 design flow as a basis for application of water quality criteria, and it is the State's preference to retain the use of the 7Q10 design flow for application to these criteria until that review is complete. Since EPA is not taking action under CWA section 303(c) authorities on this provision today, the previously State-adopted and EPA-approved provision of Tennessee standards will remain in effect for all purposes of the CWA.

EPA's decision to approve all new and revised portions of Tennessee's water quality standards, except for those provisions being addressed under separate cover or not being acted on by request of the State, is subject to the results of consultation under Section 7 of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service. By approving the standards "subject to the results of consultation," EPA retains its discretion to take appropriate action if the consultation identifies deficiencies in the standards requiring remedial action by EPA. EPA will notify Tennessee of the results of the Section 7 consultation upon completion of the action.

We would like to commend you and your staff for your continued efforts to protect and enhance Tennessee's waters during this triennial review. If you have questions regarding EPA's actions, please contact me at (404) 562-9470 or have a member of your staff contact Lauren Petter at (404) 562-9272.

Sincerely,



James D. Giattina, Director
Water Management Division

cc: Paul E. Davis, TDEC